UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

ARCHITECTURAL CONTRACTORS TRADE ASSOCIATION

Employer

and **Case 7-RC-22466**

LOCAL 67, OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, AFL-CIO

Petitioner

and

LOCAL 9, INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFTWORKERS, AFL-CIO

Intervenor[1]

APPEARANCES:

John C. Dickinson, Attorney, of Birmingham, Michigan, for the Employer.
Eric Frankie, Attorney, of Detroit, Michigan, for the Petitioner.
John Adam, Attorney, of Southfield, Michigan, for the Intervenor.

DECISION AND ORDER

[1] At hearing, Petitioner challenged Intervenor's standing to intervene. Intervenor's motion to intervene is based on its showing of interest in Arbor Construction Personnel, Inc., Case 7-RC-22440, which involved a member of the Employer. In addition, I take administrative notice that the Intervenor entered into evidence in William E. Harnish Acoustical, Inc., Case 7-RC-22480 and in Saylor's, Inc., Case 7-RC-22482, both of which issued contemporaneously with this decision, its agreements with members of the Employer to be bound by the terms of Intervenor's contract with Michigan Council of Employers of Bricklayers and Allied Craftworkers, which applies to plasterers. The term of that contract is from June 22, 2000 through August 1, 2003. I find that the Intervenor has demonstrated its interest in this proceeding, and the hearing officer properly granted the motion to intervene.

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,[2] the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organizations involved claim to represent certain employees of the Employer.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

The Petitioner is currently recognized as the bargaining representative of a unit of approximately 250 full-time and regular part-time plasterers employed by members of the Employer working at or out of the facilities of those members. It desires certification under the Act in a multi-employer unit encompassing all plasterers employed by employers who are members of the Employer, a multi-employer association formed for purposes of collective bargaining. The Employer agrees that a multi-employer unit is appropriate. The Intervenor's position is that a multi-employer unit is inappropriate. The Intervenor also argues that the petition is barred by the Petitioner's existing collective bargaining agreement with the Employer, and by the July 29, 2002 election in Spectrum HR/Commercial Interior Systems, Case 7-RC-22032, as Spectrum is a member of the Employer and its employees would be included in the proposed unit.

For the reasons set forth below, I find there is no contract bar to the instant petition because the Petitioner is the recognized bargaining agent of the employees covered by the contract and may petition for certification during the term of its own contract. I further find that the election in Spectrum HR/Commercial Interior Systems, Case 7-RC-22032, does not bar an election. However, I find that the unit

[2] All parties filed briefs, which were carefully considered.

in which the Petitioner seeks certification is inappropriate, and on this basis I dismiss the petition.

The Employer, formerly known as the Detroit Association of Wall & Ceiling Contractors, is a multi-employer association formed for the purposes of collective bargaining. It is made up of 49 or 50 contractors employing over 2000 employees in different skilled trades. Approximately nine contractors employ plasterers.

The Employer and Petitioner are parties to a Section 9(a) agreement effective by its terms from August 1, 2000 through May 31, 2003. This agreement covers work performed in certain areas in the state of Michigan, including Wayne, Oakland, Lapeer, Macomb, and St. Clair counties. At the end of November 2000, the Employer and Petitioner signed an "Agreement" to Amend Collective Bargaining Agreement", which expanded the territorial coverage of the 2000-2003 agreement to additionally include the counties of Washtenaw and Sanilac and portions of Livingston County.[3]

As a threshold matter, the Intervenor contends that the Petitioner's contract with the Employer serves as a bar to the instant petition. However, it is well established that an employer's recognition of, and current contract with, a petitioning union does not bar a petition for certification by that union. ***Duke Power***, 173 NLRB 240 (1969). A recognized bargaining agent is entitled to the benefits of certification. ***Id.; General Box Co.***, 82 NLRB 678 (1949). Although the Intervenor argues that the timing of the filing of the instant petition—26 days before the collective bargaining agreement was to expire—should preclude the Petitioner from seeking the benefits of certification, the Board will entertain a petition filed by a voluntarily recognized union desiring certification at any time during the contract term. ***Id.*** There are no time constraints in that situation comparable to the insulated period under the contract bar doctrine.[4] Accordingly, I find that the Petitioner's contract with the Employer is not a bar to the instant petition.

In addition, the Intervenor argues that the July 29, 2002 election in Spectrum HR/Commercial Interior Systems, Case 7-RC-22032, is a bar to the instant petition as Spectrum is a member of the Employer and its employees would be included in the proposed unit. The Intervenor's argument is based on Section

[3] The amendment covers Livingston County, excluding the townships of Conway, Cohoctah, Deerfield, Handy, Hartland, Osceola, Tyrone, Howell Township and the city of Howell.

[4] The parties to a contract which is approaching its expiration date are provided with a 60-day "insulated period" immediately preceding and including the expiration date to negotiate and execute a new contract. The insulated period does not apply where, as here, the contract is not a bar for other reasons under Board rules. ***National Brassiere Products Corp.***, 122 NLRB 965 (1959); ***Stewart-Warner Corp.***, 123 NLRB 447 (1959).

9(c)(3)'s prohibition on holding an election in any bargaining unit or subdivision thereof in which a valid election was held during the preceding 12-month period.[5] Section 9(c)(3) does not, however, preclude the holding of an election in a larger unit where there has been a previous election in a smaller unit in the preceding 12 months, because the subsequent election is not being conducted in a "unit or any subdivision" in which the earlier election was held. ***Treasure City, Inc.***, 206 NLRB 185, 185-186 (1973), ***Allstate Insurance Co.***, 176 NLRB 94, 94-95 (1969); ***Thiokol Chemical Corp.***, 123 NLRB 888, 890 (1959). Thus, I find the election in Spectrum HR does not constitute a bar to the instant petition.

The Intervenor also contends that a multi-employer unit is not appropriate. Although the Employer and Petitioner are the parties to the 2000-2003 agreement, the agreement explicitly states that the Employer entered into the contract as the bargaining agent on behalf of its individual members. It also states in its first paragraph that within the agreement, the Employer is referred to as "A.C.T." and the individual employers are referred to as "Employer." Thereafter, the recognition clause of the agreement Article I, Section I, specifically provides that:

> "The Employer hereby recognizes Local 67 as the sole Collective Bargaining Agent for all journeyman and apprentice plasterers in the employment of the Employer with respect to wages, hours and other terms and conditions of employment on any and all work described in this agreement whenever performed.
>
> "Each Employer, in response to the Union's claim that it represents a majority of each Employer's employees, acknowledges and agrees that there is no good faith doubt that the Union has been authorized to, and in fact does, represent such employees.
>
> "The Employer agrees to recognize in such case, the Plasterers' & Cement Masons' Local 67 as the majority representative of its Employees pursuant to Section 9(a) of the Labor Management Relations Act. They are now or hereafter the sole and exclusive collective bargaining representatives for the employees in the bargaining unit with respect to wages, hours of work and all other terms and conditions of employment." (Emphasis added).

The general rule is that a single-employer unit is presumptively appropriate. Thus, to establish a contested claim for a broader unit, a controlling history of collective bargaining on a multi-employer basis must be shown. ***Central Transport, Inc.***, 328 NLRB 407 (1999); ***Cab Operating Corp.***, 153 NLRB 878,

[5] Section 9(c)(3) provides in pertinent part: "No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held."

879-80 (1965); ***Bennett Stone Co.***, 139 NLRB 1422, 1424 (1962); ***Chicago Metropolitan Home Builders Association***, 119 NLRB 11184 (?) (1958). The "ultimate question . . . is the actual intent of the parties." ***Van Eerden Co.***, 154 NLRB 496, 499 (1965).

As the foregoing language from the recognition clause indicates, the clear intent of the Employer and Petitioner was to create single-employer bargaining units governed by Section 9(a) upon the demonstration of majority status as to each individual employer's employees. Recognition was not granted by the Employer to the Petitioner. Rather, the recognition clause in the contract specifically provides that the Employer is acting merely as the bargaining agent of its constituent members and the unit is defined in terms of each employer. The evidence adduced at the hearing was insufficient to indicate the Employer and Petitioner, despite the clear contract language to the contrary, intended to create a multi-employer unit. Absent testimony or evidence that the parties intended to create a multi-employer unit, I find the contract language supports the finding of single-employer units.

IT IS ORDERED, based on the foregoing and the entire record, that the petition is dismissed.[6]

Dated at Detroit, Michigan, this 9th day of July 2003.

(SEAL)

/s/ Stephen M. Glasser
Stephen M. Glasser, Regional Director
National Labor Relations Board-Region 7
Patrick V. McNamara Federal Building
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Classifications

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347 2083 7567 0000
347 4030 1800 0000
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[6] Under the provisions of the Board's Rules and Regulations, a request for review of this Decision and Order may be filed with the **National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099th 14th Street, N.W., Washington, D.C. 20570.** This request must be received by the Board in Washington by **July 23, 2003**.